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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 MARTHA P. VARELA-GARCIA,  
11 Plaintiff,  
12 v.  
13 CAROLYN W. COLVIN, Acting  
14 Commissioner of Social Security,  
Defendant.

CASE NO. 16cv0665-WQH-BGS  
ORDER

15 HAYES, Judge:

16 The matter before the Court is the Report and Recommendation issued by United  
17 States Magistrate Judge Bernard G. Skomal (ECF No. 13).

18 **I. Introduction**

19 On May 2, 2012, Plaintiff filed an application for disability insurance benefits,  
20 alleging disability beginning on October 6, 2011. (Administrative Record (“AR”) at  
21 271-280). Plaintiff’s application was initially denied on November 16, 2012, and  
22 denied upon reconsideration on March 15, 2013. *Id.* at 201-06, 208-14. On April 18,  
23 2013, Plaintiff filed a request for a hearing. *Id.* at 215-16. Following a hearing on April  
24 30, 2014, Administrative Law Judge (“ALJ”) Jay E. Levine issued a decision denying  
25 Plaintiff’s application on August 5, 2014. *Id.* at 19-68. On January 19, 2016, Social  
26 Security Appeals Officer Richard M. Ciaramello, Jr. issued a Notice of Appeals Council  
27 Action denying Plaintiff’s request for a review of the ALJ’s decision. *Id.* at 1-4. The  
28 Notice stated that the ALJ’s decision “is the final decision of the Commissioner of

1 Social Security” in this case. *Id.*

2 On March 18, 2016, Plaintiff commenced this action seeking judicial review of  
3 the Defendant’s decision to deny Plaintiff’s application for benefits, pursuant to  
4 42 U.S.C. 405(g). (ECF No. 1). On May 31, 2016, Defendant filed an answer. (ECF  
5 No. 7). On July 7, 2016, Plaintiff filed the Motion for Summary Judgment. (ECF No.  
6 10). On August 9, 2016, Defendant filed the Cross-Motion for Summary Judgment.  
7 (ECF No. 11). On August 19, 2016, Plaintiff filed a reply. (ECF No. 12).

8 On January 23, 2017, the Magistrate Judge issued the Report and  
9 Recommendation. (ECF No. 13). The Magistrate Judge found that the ALJ committed  
10 “legal error” by failing to provide “detail” in his decision as to “what medical evidence  
11 he took into account in deciding to reject Plaintiff’s treating physicians’ opinions  
12 regarding Plaintiff’s abilities, because the ALJ did not explain which medical evidence  
13 he relied on in determining that their opinions were unsupported.” *Id.* at 23. The  
14 Report and Recommendation recommends that the Court make “a finding that the ALJ  
15 failed to provide sufficiently specific reasons for rejecting the opinions of Drs. Roldan  
16 and Borrero” and recommended that this case be remanded to the Social Security  
17 Administration and the ALJ for further consideration. *Id.* at 23-24, 27.

18 The Magistrate Judge found that there was “no inconsistency between Dr.  
19 Glassmire’s conclusions regarding Plaintiff’s limitations and the ultimate determination  
20 of Plaintiff’s RFC [Residual Functional Capacity] by the ALJ.” *Id.* at 26. The  
21 Magistrate Judge found that even if the ALJ “fail[ed] to mention the moderate  
22 limitations ascribed by Dr. Glassmire[,]” any omission was harmless error. *Id.* The  
23 Report and Recommendation recommends that the Court make “a finding that there was  
24 no legal error in this instance, and even if there was legal error, such error was  
25 harmless.” *Id.* at 26-27.

26 The Report and Recommendation states that “no later than February 6, 2017, any  
27 party to this action may file written objections with the Court and serve a copy to all  
28 parties.” *Id.* at 27. The Report and Recommendation states that “any reply to the

1 objections shall be filed with the Court and served on all parties no later than February  
2 20, 2017.” *Id.* The docket reflects that no objections have been filed.

## 3 **II. Review of the Report and Recommendation**


4 The duties of the district court in connection with a report and recommendation  
5 of a magistrate judge are set forth in Federal Rule of Civil Procedure 72(b) and  
6 28 U.S.C. § 636(b). The district judge must “make a de novo determination of those  
7 portions of the report or specified proposed findings or recommendations to which  
8 objection is made[.]” and “may accept, reject, or modify, in whole or in part, the  
9 findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b). The  
10 district court need not review de novo those portions of a Report and Recommendation  
11 to which neither party objects. *See Wang v. Masaitis*, 416 F.3d 992, 1000 n.13 (9th Cir.  
12 2005); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc)  
13 (“Neither the Constitution nor the [Federal Magistrates Act, 28 U.S.C. § 636] requires  
14 a district judge to review, de novo, findings and recommendations that the parties  
15 themselves accept as correct.”).

16 The parties have not filed objections to the Report and Recommendation. The  
17 Court has reviewed the Report and Recommendation, the written opinion of the ALJ,  
18 the administrative record, and the submissions of the parties. The Court concludes that  
19 the Magistrate Judge correctly found that the ALJ committed legal error by failing to  
20 detail why the ALJ discounted the opinions of the treating physicians Drs. Roldan and  
21 Borrero. The Magistrate Judge correctly concluded that this case should be remanded  
22 to the Social Security Administration for further consideration by the ALJ. The Court  
23 further concludes that the Magistrate Judge correctly found that there was no  
24 inconsistency between Dr. Glassmire’s conclusions regarding Plaintiff’s limitations and  
25 the ALJ’s determination of Plaintiff’s RFC. The Magistrate Judge correctly concluded  
26 that even if the ALJ committed error by failing to mention the moderate limitations  
27 ascribed by Dr. Glassmire, any such omission was harmless error.

## 28 **III. Conclusion**

1 IT IS HEREBY ORDERED that (1) the Report and Recommendation (ECF No.  
2 11) is adopted in its entirety; (2) the Motion for Summary Judgment filed by Plaintiff  
3 (ECF No. 10) is granted in part and denied in part; (3) the Cross-Motion for Summary  
4 Judgment filed by Defendant (ECF No. 11) is granted in part and denied in part; and (4)  
5 this case is remanded to the Social Security Administration for the Administrative Law  
6 Judge to further clarify his decision to afford little weight to the opinions of Plaintiff's  
7 treating physicians Drs. Roldan and Borrero and for further proceedings consistent with  
8 this Order and the Report and Recommendation.

9 DATED: March 29, 2017

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11 **WILLIAM Q. HAYES**  
12 United States District Judge  
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